

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 675 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

PRAVINBHAI SHANTILAL PATEL

Versus

DY.CONSERVATOR OF FORESTS & 2

Appearance:

MR BB NAIK for Petitioner (absent)
Mr.U.A.Trivedi, Addl.Public Prosecutor, for Respondent
No.1.
Rest served.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 18/01/97

ORAL JUDGEMENT

The petitioner, who is the owner of the Matador

Tempo bearing Registration No.GQC 4355 has challenged the judgment and order passed by the learned Sessions Judge, Surat on 4.6.1988 in Criminal Appeal No.47/86. By the impugned judgment and order, the learned Sessions Judge partly allowed the appeal directing the appellant-petitioner to pay the penalty of Rs.36,000/- in lieu of the order of confiscation of the aforesaid motor vehicle. The aforesaid motor tempo driven by the petitioner himself was intercepted on Bajipura Highway Road. It was found containing produce of forest, i.e. timber admeasuring 1452 cubic metres. An offence under the Indian Forest Act, 1927 was lodged against the petitioner and the inquiry for confiscating the motor truck under section 61A of the said Act was initiated. The respondent No.1 as the Competent Authority passed the order of confiscation of the truck to the State Government, on completion of the inquiry, as per his order dated July 19, 1986. The petitioners, therefore, preferred appeal under section 61B of the Forest Act before the Sessions Court, Surat.

The learned Sessions Judge considered the merits of the case and came to the conclusion that the order passed by the Deputy Conservator of Forest, Vyara, was just and proper, inasmuch as when the truck was intercepted the appellant, who himself was driving the tempo at the relevant time, had run away from the scene. There was clear involvement of the petitioner in illicit activity of carrying forest produce unauthorisedly. The said truck was intercepted by the Forest Officers and the Police Officers as well. The plea of the petitioner that his truck was hired by someone and the goods to be carried therein was covered by the regular permit was not believed by the Competent Authority and the Sessions Court as well. The truck was thus believed to be used for the commission of the offence of transporting the forest produce illicitly and unauthorisedly. The learned Sessions Judge, however, considering the order of confiscation of the truck as harsh, modified it by imposing penalty of Rs.36,000/- instead of confiscation of the truck. It is against this order that the petitioner has approached this Court by way of the present petition under Article 226 of the Constitution of India.

Mr.B.B. Naik, learned Advocate for the petitioner, has not chosen to remain present when the matter was taken up for hearing. I have heard Mr.U.A. Trivedi, learned Addl. Public Prosecutor, appearing for

the respondent-State. There is no case which would warrant any interference in the concurrent findings of facts by the Competent Authority. There is no merit in the petition.

In the result, the petition is liable to be dismissed, and is hereby dismissed. Rule discharged. Interim relief stands vacated.

18.1.1997.

After passing the aforesaid order, Mr.B.B.Naik, learned Advocate for the petitioner, has appeared. He requested for time. As the court has examined all the case-papers and heard the learned A.P.P., request for adjournment was rejected. At his request, he has been heard.

Mr.Naik submitted that no show cause notice, as required under section 61-B of Forest Act (Gujarat Amendment) was served on the petitioners. He concedes that no specific contention about the show cause notice having been not served, was raised before the Sessions Court at the time of hearing of the Criminal Appeal No.47/86. He also concedes that no such specific contention has been raised in this petition too in that regard, but points out para 9 of the petition to the effect that the order is "in gross violation of the principles of natural justice" and the proper material was not disclosed to the petitioner. He also referred to the statement dated 5.5.1986 of the petitioner.

The contention of Mr.Naik that no cause notice was served on the petitioner does not appear to be correct, inasmuch as the impugned order does refer to the show cause notice having been served on the petitioner in the following terms:-

The notice purporting to be under section 61-B of the Forest Act as amended by Gujarat Amending Act bearing

No.B/Guna/TA/22/572 dated 5.5.1986 was thus served on the petitioners. Accordingly, the petitioner had remained present in response to the said show cause notice and his reply was recorded. He sought further time to furnish the other evidence and the Competent Authority, having accepted the request, had granted 15 days' time for furnishing the further evidence. It, therefore, cannot be said that there was no notice as required under law. The statement of Mr.Naik is, therefore, contrary to the record and cannot be accepted. In support of his submission, Mr.Naik has cited several authorities. Considering all the authorities, I am of the view that none of them is helpful to the petitioner, as the petitioner was served with due show-cause notice under sec.61-B of the said Act.

As regards submission of Mr.Naik that no material was disclosed to the petitioner and as such he had no adequate opportunity to explain it, has no substance. No such grievance was made either before the competent authority or before the appellate forum by the petitioner in regard to the alleged non-disclosure of any material. This Court in exercise of the jurisdiction under Article 227 cannot examine such question of facts, particularly when there is nothing on record to suggest that the petitioner ever demanded disclosure of any material, and yet the same were withdrawn. There is no illegality in the impugned order so as to invoke jurisdiction under Article 227 of the Constitution.

In the above view of the matter, the aforesaid order dismissing the petition stands.

At this stage, Mr.Naik requests for continuing the stay for four weeks to enable the petitioner to prefer appeal. The stay is with regard to payment of Rs.36,000/-(rupees thirty-six thousand) only. In facts of the case, the request is rejected.
